HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 25679 of 2007

03.12.2007

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Between:

Teegela Lakshmi Nalini & others

… Petitioners

AND

The District Collector,
West Godavari District & another

… Respondents

Counsel for the petitioners : Sri Meharchand Nori

Counsel for the respondents : Assistant Government Pleader for Land Acquisition

O R D E R:

This writ petition is filed for a writ of certiorari to quash order dated 11.10.2007 passed by respondent No.1, whereby he rejected the objections filed by the petitioners to the acquisition of Ac.1.00 of land covered by R.S. No. 125/1 of Penakanametta Village of Kovvur Mandal, West Godavari District for providing house sites to weaker sections under Indiramma programme phase-I.

The petitioners are the owners of Ac.2.00 of land in the aforementioned survey number. On 07.02.2007, notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published whereunder the said land was proposed to be acquired for providing house sites to weaker sections. As the respondents invoked

the provisions of Section 17(4) of the Act by dispensing with the enquiry under Section 5-A, the petitioners filed Writ Petition No. 4062 of 2007. This Court disposed of the said writ petition on 01.03.2007 by directing the respondents to hold enquiry under Section 5-A of the Act. Accordingly, the objections filed by the petitioners were considered by respondent No.2 and on the basis of the report sent by him to respondent No.1, the latter rejected the same by order dated 11.10.2007 which is assailed in this writ petition.

Sri Meharchand Nori, learned counsel for the petitioners submitted that though this Court directed holding of enquiry, respondent No.2 failed to give an opportunity of personal hearing and, therefore, the order passed by respondent No.1 cannot be sustained. Learned counsel further argued that though the petitioners raised several objections opposing the proposed acquisition, respondent No.1 has not properly considered the same.

I have carefully considered the submissions of the learned counsel for the petitioners. In their affidavit, the petitioners stated that to their surprise, respondent No.1 conducted an enquiry behind their back without giving an opportunity of personal hearing and without considering their objections. In page 2 of the impugned order, respondent No.1 stated as under:

> " Regarding 5-A enquiry, the Land Acquisition Officer & Revenue Divisional Officer, Kovvur, has reported that he conducted 5-A enquiry on 20.04.2007; that the land owners viz. T. Laxmi Nalini, W/o Srinivas, and T. Laxmi, W/o Venkata Raju have attended 5-A enquiry and filed written objections, besides that he recorded statements from them."

This finding of respondent No.1 is not specifically arraigned in the affidavit filed in support of the writ petition. The tenor of the

aforementioned averment contained in the affidavit filed in support of the writ petition discloses that the petitioners were expecting respondent No.1 to give them an opportunity of personal hearing. It is not their case that respondent No.2 has not given them the said opportunity in the enquiry held under Section 5-A of the Act.

A perusal of notification dated 07.02.2007 issued under Section 4(1) of the Act discloses that the District Collector delegated all his powers under Section 4 of the Act to the Revenue Divisional officer, Kovvur (respondent No.2 herein) and his subordinates to act according to Section 4(2). Since the portion of the notification relating to invocation of urgency clause was set aside earlier, respondent No.2, who is delegated with the power, held enquiry. As he had already given them an opportunity of personal hearing on 20.04.2007, the petitioners' grievance that they were not heard by respondent No.1 cannot be countenanced.

With respect to the contention of the learned counsel that respondent No.1 has not considered his clients' objections properly, I have carefully gone through the order passed by respondent No.1 and I am convinced that he had referred to all the objections raised by the petitioners and given reasons for rejecting the same on the basis of the report submitted by the enquiring authority. The learned counsel contended that the finding of respondent No.1 that the petitioners are not small farmers and that their family holds an extent of Ac.11.96 cents cannot be sustained for the reason that the joint family land, as a whole, cannot be taken into consideration in considering the status of the petitioners. It may be pointed out that the provisions of the Land Acquisition Act, 1894 do not prohibit acquisition of lands of small farmers. The government, however, issued circulars in which it is mentioned that to the extent possible, the acquisition of lands

belonging to small farmers has to be avoided. This does not mean that in every case, irrespective of non-availability of other lands, the respondents cannot acquire the lands of small farmers. It cannot be denied that acquisition of land for providing house sites to poor is an avowed public purpose. A reading of the order shows that the entire family of the petitioners owns Ac.11.96 cents of land and the petitioners did not dispute the same. Respondent No.1, therefore, took into consideration the said aspect and rejected the objection that the petitioners are small farmers. Similarly, respondent No.1 had considered the objection that one P. Gopala Krishna has Ac.6.00 of land in R.S. No. 131 and rejected the same on the ground that already an extent of Ac.3.00 of land belonging to him was acquired for providing house sites to weaker sections. Similarly, the objection i.e. the local school and temple have got certain lands was also considered and for reasons given in the order, he had rejected the same.

The law is well settled that while examining an order of an administrative authority, the High Court does not act as a Court of appeal and such orders are liable to be interfered with only on limited grounds, namely; illegality, irrationality and procedural impropriety (See **Tata Cellular v. Union of India**[1] and **Reliance Energy Limited and another v. Maharashtra State Road Development Corporation Limited**[2]).

A careful perusal of the order impugned in the writ petition shows that the same does not fall in any of the abovementioned grounds warranting interference of this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No. 33454 of 2007 filed by the petitioners for interim relief is also dismissed.

C.V.NAGARJUNA REDDY, J

03.12.2007
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[1] (1994) 6 SCC 651
[2] (2007) 8 SCC 1